

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRONE J. TACKETT,	§
	§
Defendant Below-	§ No. 570, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
STATE OF DELAWARE,	§ for New Castle County
	§ Cr. ID 0801003682
Plaintiff Below-	§
Appellee.	§

Submitted: January 28, 2011

Decided: March 4, 2011

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 4<sup>th</sup> day of March 2011, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, Tyrone Tackett, filed this appeal from the Superior Court's denial of his motion for correction and/or modification of sentence. After careful consideration of the parties' respective positions, we find that the Superior Court's judgment must be reversed and that this matter must be remanded for further action by the Superior Court consistent with this order.

(2) The record reflects that Tackett pled guilty in October 2008 to one count of possession with intent to deliver a schedule I controlled

substance<sup>1</sup> and one count of resisting arrest.<sup>2</sup> The Superior Court sentenced Tackett on the drug charge<sup>3</sup> as an habitual offender pursuant to 11 Del. C. § 4214(a) to seven years at Level V incarceration with credit for twelve days previously served. The sentencing order states, “This is a mandatory sentence pursuant to DE164752000aFE.” For resisting arrest, the Superior Court sentenced Tackett to one year at Level V incarceration to be suspended immediately for decreasing levels of supervision.

(3) Tackett filed a motion contending that the Superior Court’s sentencing order must be corrected to eliminate the provision that states, “This is a mandatory sentence pursuant to DE164752000aFE.” According to Tackett, the statute referenced by the Superior Court, 16 Del. C. § 4752(a), does not authorize the imposition of a mandatory term of incarceration. Tackett asserts that the Superior Court’s imposition of a mandatory sentence prohibits him from earning good time, which is contrary to 11 Del. C. § 4214(a), the habitual offender statute pursuant to which he was sentenced.

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<sup>1</sup> DEL. CODE ANN. tit. 16, § 4752(a) (2003).

<sup>2</sup> DEL. CODE ANN. tit. 11, § 1257(b) (2007).

<sup>3</sup> In its answering brief, the State asserts that the Superior Court erroneously sentenced Tackett on a charge of possession within 1000 feet of a school. We find no support for this contention on the face of the sentencing order or anywhere else in the record. Accordingly, we do not address the State’s confession of error.

(4) We agree. Among other reasons, a sentence is illegal if it is internally contradictory or imposes a punishment not authorized by the judgment of conviction.<sup>4</sup> In this case, the Superior Court declared Tackett to be an habitual offender and sentenced him on the drug conviction pursuant to 11 Del. C. § 4214(a). Section 4214(a) provides that any sentence imposed under that subsection shall be served in its entirety without the benefit of probation or parole but shall be eligible to earn good time.<sup>5</sup> Thus, we find that the Superior Court's imposition of a mandatory term of incarceration, to the extent it prevents Tackett from earning good time, to be inconsistent with Section 4214(a).

(5) Moreover, 16 Del. C. § 4752(a),<sup>6</sup> the statute pursuant to which Tackett pled guilty, also does not authorize the imposition of a mandatory term of incarceration. While Section 4763 of Title 16 requires the imposition of mandatory minimum terms of incarceration for repeat offenders like Tackett, the Superior Court did not sentence Tackett pursuant to that statute but instead sentenced him pursuant to 11 Del. C. § 4214(a). Even if the Superior Court had intended to impose a minimum mandatory

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<sup>4</sup> *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

<sup>5</sup> See DEL. CODE ANN. tit. 11, § 4214(a) (2007).

<sup>6</sup> DEL. CODE ANN. tit. 16, § 4752(a) (2003) (emphasis added) provides that, “[a]ny person who manufactures, delivers or possesses with intent to manufacture or deliver a controlled substance or a counterfeit controlled substance classified in Schedule I, II, III, IV or V which is not a narcotic drug is guilty of a class E felony and upon conviction shall be fined not less than \$1,000 nor more than \$10,000 and imprisoned not more than 5 years.”

term of incarceration under Section 4763, Tackett's conviction for possession with intent to deliver marijuana would have allowed the Superior Court only to impose a three-year mandatory minimum sentence.<sup>7</sup>

(6) After careful consideration of the parties' respective arguments on appeal, we agree that Tackett's sentence must be vacated and this matter remanded for reimposition of sentence consistent with this order. To the extent that the Superior Court's imposition of a mandatory sentence prohibits Tackett from earning good time on his sentence, we find such a provision to be inconsistent with the clear language of 11 Del. C. § 4214(a).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is REVERSED. This matter is hereby REMANDED to the Superior Court to resentence Tackett in accordance with this order. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>7</sup> DEL. CODE ANN. tit. 16, § 4763(a)(2)a (2003).